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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/062,561	02/05/2002	W. Denver Christopher	G2675-907658	1930

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EMERSON ELECTRIC CO  
PATENT DEPARTMENT STATION 2826  
8000 WEST FLORISSANT  
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EXAMINER

BERKO, RETFORD O

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 03/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/062,561	<b>Applicant(s)</b> CHRISTOPHER ET AL.	
	<b>Examiner</b> Retford Berko	<b>Art Unit</b> 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on [REDACTED]
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                            | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

***DETAILED ACTION***

**Acknowledgement:** The Amendment filed June 18, 2004 is acknowledged.

**Withdrawal of Claim Rejections:**

1. The rejection of claims 1-4, 8, 9, 14 and 20 under 35 USC § 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention is withdrawn in view of applicant's amendment to the claims.
2. The rejection of claims 1-4 under 35 USC § 102(b) as being anticipated by Chang et al (US 3, 950, 266) is withdrawn in view of applicant's amendment to the claims and applicant's ensuing arguments.
3. The rejection of claims 1-3 under 35 USC § 102(b) as being anticipated by Todd et al (US 5, 079, 016) is withdrawn in view of applicant's amendment to the claims and applicant's ensuing arguments.

**Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-22 remain rejected under 35 U.S.C. under 35 U.S.C. 103(a) as being unpatentable over the combination of Chang et al (US 3, 950, 266), Todd et al (US 5, 079, 016) and Bank et al (US 6, 306, 450).

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The modified claims are directed to a composition consisting essentially of a fragrance compound, said compound containing a flavor compound containing a flavor compound sensitive to radiation and natural antioxidant from extract of Labiatae or rosemary or other ingredient thereof. The claims are also drawn toward the antioxidant ingredient of rosemary extract as cinnamic acid or rosmarinic acid or mixture thereof, the fragrance compound is citral or borneol and the claims are also directed toward a method of stabilizing fragrance or flavor composition using effective amount of fragrance compound, flavor compound or mixture thereof and natural antioxidant in a composition wherein there is suitable carrier (e.g. food, cosmetic product, prepared food; meat etc).

Chang et al (Patent '266) discloses natural antioxidant stabilizing flavor composition and preventing deterioration of oils and fats in food products (abstract, col 12, lin 15-20 and table 7). As in claim 2-4, the natural antioxidant is from the herb rosemary extract (col 4, lin 25-30), generally known in the art to be from the Labiatae family.

Patent '266 did not disclose the use of citral as the fragrance compound or the use of manufactured food product, cosmetic or prepared food, seasoning or flavoring blend as the carrier in addition to oils.

Tood et al teaches (Patent '016) discloses effective color stabilization in carotenoid compositions-- color-stabilized annatto, tomato, carrot compositions and Labiatae or tea extract (source of natural antioxidant) are employed; the teaching in Patent '016 reads on applicant's claims in that as in claim 1, Patent '016 discloses fragrance or flavor composition with natural antioxidant and enhancement of color stabilization (abstract, col 16, lin 40-65). Patent '016 discloses Labiatae antioxidant (col 3, lin 67, col 5, lin 25; col 7, lin 15 and col 12, lin 35-55).

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Patent '016 discloses the stabilization of tomato juice by rosemary extract (col 13, lin 5-40).

Patent '016 does not disclose the specific chemical anti-oxidant ingredient in the rosemary extract as rosmarinic acid.

Bank et al (Patent '450) discloses the prevention of the development of off-flavor and off odors in storage-stable, citrus compositions by plant extract (Labiatae family) –abstract and col 5; lin 1-5, col 9, lin 5-35). Patent '450 discloses the natural antioxidant as obtained from rosemary extract to be rosmarinic acid (col 5, lin 55, col 7, lin 15-20 and col 8, lin 25-30); directly reading on applicant's claims 1-4. Patent '450 discloses citral as the flavoring agent in the composition (abstract, col 4, lin 30-35). Patent '450 a method of stabilizing flavor composition using plant extract citral (col 8, lin 65 continuing to col 9, lin 1-20), from Labiatae plant family (col 5, lin 1-10).

One of ordinary skill in the art would be motivated to prepare an anti-oxidant fragrance or flavor composition wherein the color deterioration is stabilized by the use of a natural antioxidant from rosemary extract in sufficient amount as described in prior art cited (Patent '266, Patent 016 or Patent '450). One of ordinary skill would expect to obtain fragrance or food composition with appealing characteristics such as longer shelf or storage life without unpleasant rancid, off-flavor, off-odor (and loss of taste in case of foods) due antioxidant action of the ingredients from the rosemary extract. Therefore the invention as a whole would have been prima facie obvious to one of ordinary skill at the time the invention was made.

### ***Response To Arguments***

Applicant argues that the present invention is the unexpected finding that emulsifiers have stabilization effect on pigments following admixture and that the references cited in the

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record contain no motivation to combine or a suggestion of the desirability of doing so in order to achieve the present invention as in the amended claims.

In response, as shown by Todd et al, pigments from marigold extract benefits from the presence of natural Labiatae antioxidants and tocopherols in the presence of surface active agents (col 12, lin 45-64 and col 13, lin 10-50). Chang et al showed antioxidant effects of rosemary extracts (abstract, col2, lin 15-35). Banks et al showed the stabilization effects of col 5, lin 1-65). Though these inventors did not disclose the use of the plant extracts for color stabilization, Todd et al is relied upon to provide the missing link between color stabilization, food preservation and the preservation of bright color in the presence of emulsifiers and other compounds. More importantly, though the modified claims are drawn toward the use of the plant extracts in the absence of surface active agents, Todd discloses that the color stabilization by the plant extracts is a synergistic, depending upon presence of surface active agents—doubled, tripled or quadrupled (col 11, lin 1-20 and col 12, lin 1-35). One of ordinary skill in the art would be motivated to use the plant extracts for color stabilization. One of ordinary skill would expect to obtain reasonable success in obtaining the desired effect even in the absence of the surface active agents that would cause an exponential stabilization effect through synergism. Therefore the invention as a whole would have been prima facie obvious to one of ordinary skill at the time that it was made.

No claims are allowed.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

### **Correspondence**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Retford Berko** whose telephone number is 571-272-0590. The examiner can normally be reached on M-F from 8.00 am to 5.30 pm

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Thurman K Page**, can be reached on 571-272-0602.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
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